Supreme Court, U. S.
FILED
SEP 26 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977

NO. 77-474

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD

Petitioners

Versus

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

JAMES O. MANNING
JACK GRANT
Attorneys for Petitioners
808 North Causeway Blvd.
Metairie, Louisiana 70001
Phone: 834-2372

J. G. HAUSER, INC., "LEGAL PRINTERS", 100-A JEFFERSON HWY., N. O., LA. 70121

INDEX

Page

OPINIONS BELOW..... 2
JURISDICTION..... 2
QUESTIONS PRESENTED..... 2
STATEMENT OF THE CASE..... 3
CONCLUSION..... 10
APPENDIX A- Judgment of the Civil District Court, Parish of Orleans, rendered September 20, 1974..13
APPENDIX B..... 15

APPENDIX C..... 24

APPENDIX D..... 25

AUTHORITIES

State, ex rel Jefferson Parish School Board vs. City Park Improvement Association, et al, 345 S. 2d 597, 340 S. 2d 259 24

Title 28 U.S.C. 1257 (3)..... 2

Act 405 of 1962, Louisiana Legislature..... 17,21,22

State of Louisiana vs. William T. Joyce Co., 261 F. 128 (CCA, La. 1919), cert. den. 253 U.S. 484, 40 S. Ct. 481..... 5

Alabama vs. Schmidt, 232 U.S. 168, 34 S. Ct. 301, 58 L. Ed. 355 (Ala. 1914)..... 5

Lassen vs. Arizona, 87 S. Ct. 584, 385 U. S. 458 (1967) 5,20

Alamo Land & Cattle Co., Inc. vs. Arizona, 495 F. 2d 12, rev. & *amended 96 S. Ct. 910*... 5,20

Nebraska vs. United States, 164 F. 2d 866 (CA8, 1947)
Writs of Certiorari denied in 334 U.S. 18, 68 S. Ct. 1070..... 8

Ervien vs. United States, 251 U.S. 41, 40 S. Ct. 75 (1919)..... 7

Johnson vs. Central Nebraska Public Power & Irrigation District,
8 N.W. 2d 841..... 9

United States vs. 78.61 Acres of Land in Dawes and Sioux Counties, Nebraska, 265 F. Supp. 564..... 8

State, ex rel Highway Commission of New Mexico vs. S. S. Walker, 301 P. 2d 317..... 9

IN THE

Supreme Court of the United States

October Term, 1977

NO.

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD

Petitioners

Versus

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

The petition of JEFFERSON PARISH SCHOOL BOARD, prays that a Writ of Certiorari issued to review the judgment of the Supreme Court of the State of Louisiana, July 1, 1977, which refused to review a judgment of the Fourth Circuit Court of Appeals, State of Louisiana, which denied petitioner any ownership or monetary consideration for its proportional interest in a 16th section "school board land" granted by the United States Congress to the State of Louisiana for the benefit of the inhabitants of the township.

OPINIONS BELOW

Petitioner sought by a declaratory judgment to determine the nature of its rights and status to approximately 28 acres of land situated in City Park of New Orleans, Louisiana. The land is a 16th section of Township 12 South, Range 11 East, which is located 85.16% in Orleans Parish and 14.84% in Jefferson Parish. The JEFFERSON PARISH SCHOOL BOARD sought declaratory relief on behalf of its inhabitants living in that township. The suit was dismissed on a Motion for Summary Judgment in the Court of original jurisdiction on July 20, 1974. The case was subsequently appealed to the Fourth Circuit Court of Appeal which affirmed with reason the lower Court's opinion and is reported at 345 S. 2d 597.

Petitioner sought a Writ of Certiorari and review in its own Supreme Court which writ was denied on July 1, 1977, 347 So. 2d 259. No rehearing is allowed for the refusal to grant a writ of certiorari in our State.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S.C. 1257 (3).

CONSTITUTIONAL QUESTIONS

1. Did the Louisiana Legislature by Act 405 of 1962 have the authority to exchange 16th section land granted to the State for public school purposes to allow said land to be used as a golf course in a public park?
2. Did the taking of the Parish of Jefferson's interest in the 16th section school lands without the payment of funds to said school district constitute an unlawful taking in contravention of the Fourteenth and Fifth Amendment of the United States Constitution?

STATEMENT OF THE CASE

The facts in this case are uncontroverted and, therefore, may be introduced to the Court in a summary manner. The Congress in its wisdom instituted a policy which was enacted into law reserving every 16th section in every township for public schools to benefit the inhabitants of the township. The primary purpose was to allow the school districts to sell the land and to use the proceeds for public education. Louisiana received such grants upon its admission to the Union in 1812.

Situated in a public park is such a 16th section consisting of approximately 28 acres of prime residential land. For some time the City of New Orleans was interested in enlarging its public golf course and sought to use this 16th section of land for that stated purpose. Because of anticipated legal problems it was successful in having the Louisiana Legislature pass Act 405 of 1962 which had the effect of transferring this 16th section land to the City Park Improvement Association to be utilized for a golf course and in turn the City Park Improvement Association transferred certain other lands in the same general area to the Orleans Parish School Board which contained an existing school known as Kennedy High and the Act further provided that any interest that the Jefferson Parish School Board had in the existing 16th section was transferred to the land reserved in exchange the Kennedy High School.

The Jefferson Parish School Board instituted this suit attacking the validity of 405 of 1962 as contrary to Federal legislation creating the trust and the taking of Jefferson Parish's interest in the land as an unlawful expropriation of the land without compensation. Thus being in violation of the United States Constitution and that of the State of Louisiana.

Even prior to the admission of Louisiana to the Union, the Congress of the United States provided for a system of rectangular survey wherein the county was divided into townships, ideally consisting of thirty-six (36) square miles and subdivided into thirty-six (36) one (1) square mile squares.

The 16th section of each township was granted to the State for schools upon its admission to statehood. Quite naturally, these townships would sometimes cross political boundaries, and in those instances the county or parish would share in the 16th section, regardless of its location, in the same proportion as the township was located within the boundaries of the parish or county. As in this instance, although the 16th section is located entirely within the boundaries of Orleans Parish, the township is located approximately eighty-five percent (85%) in New Orleans and fifteen percent (15%) in Jefferson Parish, and the parishes should share in the proceeds of a sale of the 16th section in the same proportions.

Historically, the land was donated to the State for the benefits of the inhabitants of the township, for in New England and other states a township is often recognized as a political subdivision, but not so in Louisiana. Therefore, the law has recognized that the land was donated to the State in trust for the inhabitants of the various townships.

The land in question was granted to the State upon Louisiana's admission to the Union in 1812. It so remained until 1962, when the Louisiana Legislature passed Act 405 of that session, which authorized the State Land Office to transfer the 16th section of City Park to the City Park Improvement Association, which land was to be used for a golf course and in turn, the City Park Improvement Association was to transfer certain property to the Orleans Parish School Board, which property is now Kennedy High School, and any rights that Jefferson Parish heretofore enjoyed in the 16th section of City Park was relocated to an undertermined but future right in Kennedy High School. The Act 405 of 1962 and the subsequent transfers of the property are the subject matter of this lawsuit.

Since the 16th sections were granted to the states and schools, the underlying purpose being that the states would sell the land and the revenues derived therefrom would be used for school purposes, Jefferson Parish is seeking in lieu of the lands, its estimated value at the time of the taking.

Certainly, it would be unreasonable for Jefferson Parish to seek to undo the golf course which has been constructed upon the land, but at the same time it is not unreasonable to consider the effect of Act 405 of 1962 as an expropriation of lands or funds belonging to the inhabitants of Jefferson Parish, and for its school system to be reimbursed the value of the taking as of the time it was transferred to the City Park Improvement Association.

Any approach to this question must be from a historical perspective. Millions of acres granted to the various states upon admission to the union were squandered and sold for unreasonable prices. The initial land grants were given to the states without restrictions as to disposition or use of the land and the courts in general considered that the obligation of the state to use the land in accordance with the grant for school purposes was an honorary one. *State of Louisiana vs. William T. Joyce Company,* 261 F. 128, (CCA, La. 1919) cert. den. 253 U. S. 484, 40 S. Ct. 481; *Alabama vs. Schmidt,* 232 U.S. 168, 34 S. Ct. 301, 58 L. Ed. 355 (Ala. 1914).

Congress became aware that the states honorary obligation to use these school grant lands for the purpose designated was not working and upon the admission of the State of New Mexico-Arizona and other western states there was inserted in the grant a specific prohibition against the use of funds derived from the sale of school lands for other purposes than designated by the grant.

In the last 20 years this Court and various state and federal courts have addressed themselves to the problem such as is under consideration, wherein various state and local governments sought to use 16th section lands or proceeds for purposes contrary to the trust.

This Court has addressed itself to the problem in two (2) cases; *Lassen vs. Arizona,* 87 S. Ct. 584, 385 U.S. 458 (1967); and *Alamo Land & Cattle Co., Inc. vs. Arizona,* 495 F. 2d 12, reversed and amended, 96 S. Ct. 910.

In the case of *Lassen vs. Arizona,* supra, the State of Arizona sought to construct a highway through 16th section

lands granted to the State of Arizona. The State took the position that inasmuch as the land was granted to it by an Act of Congress, it need not pay or reimburse the school system for the land taken. The Supreme Court found to the contrary, and although the Arizona land grant contained an express prohibition from using the lands for anything other than school purposes, the Court in its opinion made reference to the abuse of the sale of land grant property and by inference condemned it. The language of the Court is very emphatic in holding that "The trust will be protected and its purpose entirely satisfied if the State is required to provide full compensation for the land it uses."

This Court in that decision recognized the problem and held as follows:

> "The grant was plainly expected to produce a fund, accumulated by sale and use of the trust lands, with which the State could support the public institutions designated by the Act. It was not supposed that Arizona would retain all the lands given it for actual use by the beneficiaries; the lands were obviously too extensive and too often inappropriate for the selected purposes. Congress could scarcely have expected, for example, that many of the 8,000,000 acres of its grant "for the support of the common schools," all chosen without regard to topography or school needs, would be employed as building sites. It intended instead that Arizona would use the general powers of sale and lease given it by the Act to accumulate funds with which it could support its schools".

In essence the Court concluded thusly:

> "The trust will be protected and its purposes entirely satisfied if the State is required to provide full compensation for the land it uses."

Just last year this Court had another opportunity to address itself to this very issue. *Alamo Land & Cattle Co., Inc. vs. Arizona,* supra. This case involved a federal condemnation of

certain lands situated in the State of Arizona, which lands were subject to a grazing lease. It appeared that a substantial portion of lands in Arizona and New Mexico were involved and likewise subjected to grazing leases and the ultimate question involved was the allocation of funds between the State of Arizona asserted through federal grants and the defendant, *Alamo,* asserting compensable leasehold interest in the lands and in the improvements thereon. This Court in *Alamo* reviewed the entire history and applicable jurisprudence to federal land grants and the pruposes for which the land was given to the state. In the final analysis the Court affirmed *Lassen* and extended the doctrine of as cited, *Ervien vs. United States,* 251 U.S. 41,40 S. Ct. 75 (1919), and in affirming the doctrine of *Ervien* held as follows:

> "Much of what was said in Lassen had also been said, several decades earlier, in *Ervien vs. United States,* 251 U.S. 41, 40 S. Ct. 75, 64 L. Ed. 128 (1919), when the provisions of the same Enabling Act were under consideration in a federal case from New Mexico.the Court's concern for the integrity of the conditions imposed by the Act, therefore, has long been evident."

In discussing what appeared to be an apparent conflict between the Eighth and Ninth Circuit Courts of Appeal, the Supreme Court in *Alamo* held there was no conflict, and in doing so recognized the precedential value of cases upholding the Trust Fund Doctrine in those states which had no express provision against the transfer of the 16th section school lands in violation of the trust. The Court held that the Nebraska Enabling Act of 1864, unlike the New Mexico-Arizona Act, did not contain the detailed restrictive provisions which appeared in the New Mexico-Arizona Act. Despite the abasence of the restrictions, the Court arrived at the same results -- that in the condemnation of 16th section school board lands, the School Trust Fund must be reimbursed the full value of the land expropriated, whether the

Congressional Enabling Act contained an express restriction as found in the New Mexico-Arizona Act or one that was silent on the subject, such as the Nebraska Enablilng Act. The Court held in *Alamo* as follows:

> "*Alamo* suggests that the Court of Appeals decision is at odds with the above cited case of *Nebraska vs. United States*, 164 F. 2d 866 (CA 8 1947), cert. denied, 334 U.S. 815, 68 S. Ct. 1070, 92 L. Ed. 1745 (1948). There, in the face of a totality claim like that made by Arizona here, the Eighth Circuit ruled that trust lands in Nebraska were to be treated as any other property, and that condemnation proceeds were subject to allocation among the State as trustee and the holder of an outstanding agricultural lease. The Nebraska Enabling Act of April 19, 1864, 13 Stat. 47, was an earlier edition of this type of statute, and was adopted more than four decades before the New Mexico-Arizona Act. It did not contain the detailed restrictive provisions that appear in the 1910 Act and that was developed and utilized as passing years and experience demonstrated a need for them. Because of this, one may say, as Arizona does, that the Nebraska case is distinguishable from the present one. But the decision is not devoid of precedential value, for it is consistent with our analysis of the New Mexico-Arizona Act in its recognition of the possibility of a compensable leasehold interest in trust land upon federal condemnation, and it demonstrates the existence of that interest is not incompatible with the trust land concept. See also *United States vs. 78.61 Acres of Land*, 265 F. Supp. 564 (Neb. 1967), a post-*Lassen* case; *United States vs. 40,021.64 Acres of Land*, 387 F. Supp. 839-849 (N.M. 1975)."

This Court is not the only Court to address itself to this issue. Similar conclusions are found in *Johnson vs. Central Nebraska Public Power & Irrigation District*, 8 N.W. 2d 841, which held that the State Legislature was not authorized to make a grant in fee of school land for irrigation district use without compensation. The Court in its opinion held:

> "The statutes purporting to grant to public corporations engaged in construction, operation and maintenance of works of internal improvement the right to obtain rights of way over public school lands without compensation *are unconstitutional.*" (emphasis added)

Again, in *United States vs. 78.61 Acres of Land in Dawes and Sioux Counties, Nebraska*, 265 F. Supp. 564, as to whether the Legislature had authority to grant to the United States the right of way to school land without compensation, the Court answered in the negative and cited *Lassen vs. Arizona*, supra, pointing out that although the Nebraska Enabling Act contained no restrictions against a transfer of the property in violation of the trust, as found in *Lassen vs. Arizona*, an implied prohibition does exist and any diminution in the value of the trust is prohibited.

In the case of *State ex rel Highway Comm. of N.W. vs. S. S. Walker*, 301 P. 2d 317, the Supreme Court held that the Commissioner of Public Lands in New Mexico could charge the State Highway Commission for easements for state highways which would cross lands granted to the State of New Mexico by the Enabling Act granting its statehood. In its opinion, the Court cited the language of *Ervien vs. United States*, 251 U.S. 41, 40 S. Ct. 75, (1919), as follows:

> "Although in the present case the relator does not propose that the Commissioner build highways, it does ask that he be compelled to give free rights-of-way for highways and also to donate materials from trust lands for highway construction purposes.
>
> .....There is in the Enabling Act a specific

> enumeration of the purposes for which the lands were granted and the enumeration is necessarily exclusive of any other purpose. And to make assurance doubly sure it was provided that the natural products and money proceeds of such lands should be subject to the same trusts as the lands producing the same. To preclude any license of construction or liberties of inference it was declared that the dispostion of any of the lands or of the money or anything of value directly or indirectly derived therefrom for any object other than the enumerated ones should be 'deemed a breach of trust.'''

As mentioned above, in almost all of the cases in which the question of authority of the Legislature to divert lands for purposes contrary to the school trusts, have been successfully attacked, as evidenced by these decisions cited above.

CONCLUSION

It is respectfully submitted that the act of the Louisiana Legislature, Act 405 of 1962 was an attempt to circumvent the intent and purposes of the initial grant of 16th section school land to the State of Louisiana for the benefit of the inhabitants of the township and as such should be declared illegal and contrary to the intent and purposes of the grant.

For these reasons, a writ of certiorari should issue to review the judgment of the Louisiana Supreme Court.

Respectfully submitted,

JAMES O. MANNING
808 North Causeway Boulevard
Post Office Box 7746
Metairie, Louisiana 70010
Phone: (504) 834-2372

JACK GRANT
601 Second Street
Gretna, Louisiana 70053

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, James O. Manning, a member of the bar of the United States Supreme Court, certify that at least one copy of the foregoing petition for certiorari has been served on the adverse party by depositing same in a U.S. mail box, with first class postage prepaid, addressed to counsel's last known address in New Orleans, Louisiana.

Mr. Louis M. Jones
Assistant Attorney General
State of Louisiana
234 Loyola Avenue
New orleans, Louisiana 70112
Attorney for Defendants,
State of Louisiana and
Mrs. Ellen Bryan Moore, Registrar,
State Land Office

Beuker F. Amann
First Assistant City Attorney
and Thomas P. Anzelmo, Sr.
Assistant City Attorney
City Hall
New Orleans, Louisiana
Attorneys for Defendant,
City of New Orleans

Louis B. Porterie
of Duke and Porterie
1206 American Bank Building
New Orleans, Louisiana 70130
Attorneys for Defendant,
City Park Improvement Association

Samuel I. Rosenberg
of Polack, Rosenberg, Rittenberg & Endom
1006 Hibernia Bank Building
New Orleans, Louisiana 70112
Attorney for Defendant,
Orleans Parish School Board

Metairie, Louisiana, this day of September, 1977.

JAMES O. MANNING

APPENDIX A

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DIVISION "G"

DOCKET 4

NO. 564-179

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD

VS.

**CITY PARK IMPROVEMENT ASSOCIATION,
ORLEANS PARISH SCHOOL BOARD,
REGISTRAR, STATE LAND OFFICE,
THE CITY OF NEW ORLEANS, and
THE STATE OF LOUISIANA**

JUDGMENT

This cause came on this day on the motions for summary judgment filed herein by all defendants.

Present:

James O. Manning, Esquire
Attorney for Plaintiff,
Jefferson Parish School Board

Louis B. Porterie, Esquire
of Duke & Porterie,
Attorneys for Defendant,
City Park Improvement Association

Louis M. Jones, Esquire
Assistant Attorney General
State of Louisiana,
Attorney for Defendants,
The State of Louisiana and
Mrs. Ellen Bryan Moore, Register,
State Land Office

Beuker F. Amann, Esquire,
First Assistant City Attorney
and Thomas P. Anzelmo, Sr. Esquire,
Assistant City Attorney,
Attorneys for Defendant,
City of New Orleans

Samuel I. Rosenberg, Esquire
of Polack, Rosenberg, Rittenberg & Endom
Attorneys for Defendant,
Orleans Parish School Board

After hearing and considering the pleadings, the affidavits submitted, the briefs and the arguments of counsel, the court determined that there is no genuine issue as to material fact in this matter and considering the law to be in favor of the defendants, City Park Improvement Association, Orleans Parish School Board, Registrar, State Land Office, the City of New Orleans and the State of Louisiana, and against plaintiff, Jefferson Parish School Board, for the reasons this day orally assigned,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendants, City Park Improvement Association, Orleans Parish School Board, Registrar, State Land Office, the City of New Orleans and the State of Louisiana, and against the plaintiff, the Jefferson Parish School Board, dismissing this action at plaintiff's cost.

Judgment read, rendered and signed in open court this 20th day of September, 1974, at New Orleans, Louisiana.

JUDGE

APPENDIX B

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD VS CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA.	NO 7570 COURT OF APPEAL FOURTH CIRCUIT STATE OF LOUISIANA

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, DIV. "G", NO. 564-179, HONORABLE PAUL P. GAROFALO, JUDGE.

JOHN C. BOUTALL
JUDGE

(Court composed of Judges William V. Redmann, John C. Boutall and Patrick M. Schott).

JACK A. GRANT, COUNSEL FOR JEFFERSON PARISH

SCHOOL BOARD, JAMES O. MANNING, SPECIAL COUNSEL FOR JEFFERSON PARISH SCHOOL BOARD,
PLAINTIFF-APPELLANT.

PHILIP S. BROOKS, CITY ATTORNEY; THOMAS P. ANZELMO, SR., ASSISTANT CITY ATTORNEY; COUNSEL FOR CITY OF NEW ORLEANS.
DEFENDANT-APPELLEE.

SAMUEL I. ROSENBERG, OF POLACK, ROSENBERG, RITTENBERG & ENDOM, COUNSEL FOR ORLEANS PARISH SCHOOL BOARD,
DEFENDANT-APPELLEE.

DUKE & PORTERIE, JOHN L. HANTEL, LOUIS B. PORTERIE, COUNSEL FOR CITY PARK IMPROVEMENT ASSOCIATION; WILLIAM J. GUSTE, JR., ATTORNEY GENERAL; WARREN E. MOULEDOUX, FIRST ASSISTANT ATTORNEY GENERAL: LOUIS M. JONES. ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF LOUISIANA; ON BEHALF OF REGISTRAR, STATE LAND OFFICE, AND THE STATE OF LOUISIANA,
DEFENDANTS-APPELLEES.

April 18, 1977 *AFFIRMED.*

This is a suit in the nature of a declaratory judgment brought by Jefferson Parish School Board to determine the nature and status of its right to approximately 28 acres of land situated in City Park of New Orleans, Louisiana, being the fractional remainder of the 16th Section of Township 12, South Range 11 East, Southeastern Land District of Louisiana. Specifically, the suit seeks to declare that Act 405 of the Louisiana Legislature of 1962 is unconstitutional, and that subsequent transfers of the 16th Section property are illegal, and should be set aside. The suit seeks to have the Jefferson Parish School Board declared to be a partial owner of the 16th

Section, or in the alternative, that it be reimbursed its proportionate share of the cash value of the property.

The defendants have brought a motion for summary judgment, and it is conceded that there is no dispute as to the facts underlying this case. The trial court rendered a judgment in favor of defendant, dismissing plaintiff's suit, and the Jefferson Parish School Board has appealed.

The subject property is the remainder of one of those 16th Sections of each Township which were granted by the United States of America to the various states upon admission to statehood to be used for school purposes. The original survey of the Township showed that the 16th Section was only a fractional 16th Section, and much litigation has occurred affecting both the boundaries and the area of the Section. See Board of Directors v. New Orleans Land Company, 138 La. 32, 70 So. 27 (1915); Leader Realty Company v. Lakeview Land Company and Leader Realty Company v. New Orleans Land Company, 142 La. 169, 76 So. 599 (1917); State v. New Orleans Land Company, 143 La. 858, 79 So. 515 (1918); Brott v. New Orleans Land Company, 151 La. 134, 91 So. 653 (1922); Meyer v. State, 168 La. 146, 121 So. 604 (1929). As presently constituted the fractional section is approximately 16 acres in City Park of New Orleans lying roughly in a long narrow rectangle. While the 16th Section is located entirely in Orleans Parish, the Township itself lies in the proportion of 85.16% in Orleans and 14.84% in Jefferson Parish.

Because of the location and shape of the fractional Sixteenth Section, the Orleans Parish School Board determined that it should arrange a transfer or exchange of that land for a tract on the north boundary of City Park upon which to erect a high school. After considerable negotiations, an arrangement was made amongst the defendants whereby the exchange could be made. The Louisiana Legislature then passed Act 405 of 1962 providing for the state to transfer title of the Sixteenth Section lands to the City of New Orleans to be managed and controlled by the New Orleans City Park Improvement Association (a

State Agency) for park purposes, and further provided authorization to the City of New Orleans to convey another tract containing 17 acres to the Orleans Parish School Board for public school purposes. The Act further provided that this latter land acquired by the Orleans Parish School Board shall be held by it for the same purposes, benefits and uses as is presently provided by law for Sixteenth Section Lands, and the subsequent sale or other disposition, as well as the disbursement of the proceeds of any subsequent sale thereof, shall be the same as provided by law for Sixteenth Section Lands and the rights of the Jefferson Parish School Board in said land shall be the same as they were in the Sixteenth Section conveyed in Section 1 of the Act. Subsequent to the passage of this Act, the transfers were effected so that the fractional Sixteenth Section now forms a part of City Park and is administered by the New Orleans City Park Improvement Assn., and the other tract is utilized by the Orleans Parish School Board, which has built a high school upon the tract.

Jefferson Parish School Board contends that Act 405 of 1962 is invalid for the following reasons: By an act of Congress of February 14, 1843, 5 Stat. 600, the Legislatures of Illinois, Arkansas, Louisiana and Tennessee were authorized to sell the Sixteenth Sections in their respective states, the proceeds derived therefrom to be used for the benefit of the various school systems located within the Township in which the land was sold. The Statute further requires that the land shall in no wise be sold without the consent of the inhabitants of the Township or District in which they are located. Thereafter, the Louisiana Legislature, Beginning with Act 321 of 1855, which, together with other Acts on the subject are embodied in LSA-R.S. Title 41, Chapter 6, enacted a series of laws to provide for the public sale and leasing of the various Sixteenth Sections, and also enacted Constitutional provisions culminating in, for the purposes of this suit, the Constitution of 1921, Article 12, Sections 18 and 19 to provide for the distribution of these proceeds. It is contended that the exchange of property authorized by Act 405 of 1962 is illegal in that it does not follow

the procedures outlined in the laws enumerated above, and that further there is no distribution of proceeds in accordance with those laws.

The issue of the application of the Act of Congress February 15, 1843, c.33, 5 Stat.600, requiring consent of the inhabitants of the Township before sale of Sixteenth Section Lands can be made, has been settled in the case of *Meyer v. State*, 168 La. 146, 121 So. 604 (La. 1929). That case held that when the survey of Sixteenth Sections in Louisiana was officially approved October 20, 1873, the State of Louisiana had a complete legal title vested in it, and was no longer bound by the conditions and limitations imposed by the 1843 Act of Congress. LSA-R.S. 41:711 similarly provided for an election to be held before sale of school lands, and as to these provisions as well as to others of similar nature, we only say that the Legislature has in its wisdom passed another Legislative Act covering the point in controversy, and that such general statutes cannot prevail in the face of a special statute containing contrary provisions.

Turning to a consideration of the constitutional provisions, to-wit, Article 12, Section 18 and Section 19 of the Constitution of 1921, we do not find in those sections a prohibition against the transaction authorized under Act 405 of 1962. Those sections envisage a recovery of proceeds from lands erroneously sold, which is either credited proportionately to the school boards involved, or placed into a school fund for later use by those school boards. We note for example that the same Constitution in Article 12, §14 points out the sources of funds for support of public schools. After enumerating the avails of certain taxes, etc., it sets out in subsection (c) additional state funds, the first of which is the following:

> "1. The interest on the proceeds of lands heretofore or hereafter granted by the United States for school purposes and such revenues as may be derived from unsold portions of such lands; provided, that the Legislature is authorized to release all proceeds from the sale of such lands to

the parishes for use in acquiring, constructing, and equipping public school-plant facilities."

Considering these three sections of Article 12, it would appear that the state may sell, lease or otherwise enter into contracts which may provide revenue from the use or disposition of school lands, and while the sections appear to consider that these proceeds will usually be in cash, there is nothing that would prevent the state from legislatively providing for other proceeds not in cash, and the disposition of these proceeds.

Under existing law (R.S. 41:631 as amended Acts 1954, No. 86 §1) since the Sixteenth Section involved lies entirely in the Parish of Orleans, the Orleans Parish School Board is entitled to buy the tract for its exclusive purposes, and need only pay into the fund for the benefit of it and the Jefferson Parish School Board the sum of $1.25 per acre. By Act 405, the Legislature has devised a different method of payment than money by exchanging or swapping the Sixteenth Section Tract for another tract of land for use as school purposes, and has preserved the rights of the Jefferson Parish School Board in the second tract, the same as it had in the first tract. There is no complaint made that the tracts are of unequal value, or that the Jefferson Parish School Board has had its right to share in the proceeds lessened by the provisions of Act 405. It is contended instead that the Act has disposed of the land for another governmental purpose, that this constitutes a sale, and that the respective school boards are entitled to their proportionate cash value of the sale.

In support of this contention, appellant urges to us a number of cases requiring cash payment when land is used for other governmental purposes. Appellant relies most strongly on doctrines expressed in the cases of *Lassen v. Arizona*, 87 SCT 584, 385 U.S. 458 (1967) and the case of *Alamo Land & Cattle Company, Inc. v. Arizona* 96 SCT 910, 424, U.S. 295 (1976). However in those cases it was proposed simply that the state, being owner of the land, could divert its use to a purpose other

than a school purpose without compensation. This is not our situation. Here there are proceeds from the transfer of the land, that is, another tract of land for school purposes, with the obligation of school purposes being shifted from one tract to another better suited for school purposes. The transaction authorized under Act 405 was not a sale, but an exchange, the proceeds of the exchange being the new property acquired. Thus the Act is in keeping with the spirit of the original donation of these lands, that is for public school purposes. Instead of the Orleans Parish School Board being able to use the Sixteenth Section upon which to build a school, in this case the same purposes are accomplished by virtue of dedication of new lands for this public school purpose.

This same proposition, that this is an exchange of lands for governmental purposes, would remove Act 405 from the application of Article 4, Section 12 of the Constitution of 1921 which provides:

> **"The funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, associations or corporations, public or private;****"

This prohibition is basically directed against the situation wherein the state may make a donation, gift or other free use of its property for other than governmental purposes, and it is not directed against state agencies or political corporations in the conduct of their legitimate affairs. See *LeBlanc v. Police Jury of Parish of Rapides*, 188 So. 2d 131 (La. App. 3rd Cir. 1966). If the word "Granted" were to be interpreted as prohibiting *any* exchange or sale of Sixteenth Section school lands, the entire statutory system of their utilization for school purposes would be adversely effected, defeating the purposes for which they were originally granted to the State.

The Supreme Court has held in a case involving similar provisions in a prior constitution, that the prohibition against granting state property does not prohibit the state from

changing the destination of particular public property or from intrusting the administration of such property to the municipal corporation within the limits of which it lies. *Saucier v. City of New Orleans*, 119 La. 179, 43 So. 999 (1907). Similarly, a sale of property discovered unsuitable for governmental purposes of the Board of Commissioners of the Port of New Orleans was held not a "grant" within the provisions of this section of the 1921 Constitution. *Board of Com'rs of Port of New Orleans v. New Orleans Public Service*, 161 La. 741, 109 So. 408 (1926). See also Op. Atty. Gen. 1926-28, p. 273, wherein it was ruled permissible to exchange tracts of land between Louisiana State University and the state insane asylum for benefit of, and more suitability to use of, each institution.

We hold that the prohibitions of Article IV §12 do not apply to Act 405 of 1962 and the exchanges of property provided therein.

Finally, Act 405 is challenged in that it is a local or special act in violation of Article IV § 4 and Article IV § 6 of the Constitution of 1921, the first as to its content and the latter as to lack of proper publication.

Primarily, we conclude that the Act is not a local or special act. The Act involves the transfer of certain publicly owned property as expressed briefly in the Act's title:

> "To provide additional means and authority to carry out the purposes of the public park location in the City of New Orleans known as the City Park of New Orleans by transferring title to certain State owned lands within the City Park to the City of New Orleans and providing for the management and control thereof by the New Orleans City Park Improvement Association, an agency of the State; and to provide for the transfer of title to other lands by the City of New Orleans to the Orleans Parish School Board, an agency of the State; repealing all laws or parts of laws in conflict herewith."

State land is in effect owned by all of the citizens of the State and its sale or transfer affects the rights of all citizens

generally, not just the citizens of the particular locality in which the land is situated. Op. Atty. Gen. 1944-46, p. 340; Op. Atty. Gen 1942-44, p. 702; 82 C.J.S. Statutes §14b, and cases therein cited. A statute is not a local or special law if it affects persons or things throughout the state, operates on subject in which the people at large are interested, although to some degree it applies only to a particular locality, or is both general and special or private. *Kotch v. Board of River Port Pilot Com'rs for Port of New Orleans*, 209 La. 737, 25 So. 2d 527 (1946), affirmed, 330 U.S. 552, 67 S. Ct. 910, 91 L. Ed. 1093. Local or special laws refer to laws wherein private individuals are seeking some private advantage or advancement for the benefit of private persons or property within a certain locality. State ex rel *Grosch vs. City of New Orleans*, 211 La. 241, 29 So. 2d 778 (1947).

We note that the property transferred is not to be used by persons for private advantage but for park and recreational purposes of the public generally to be administered by a state agency. Similarly, the other portion of land concerned is to be used for public school purposes within the intent of the Sixteenth Section laws. We refer to the following cases which would seem to involve particular plots of ground and particular governmental use wherein the concerned statute was held not to be special or local and are persuasive in this case. *Knapp v. Jefferson-Plaquemines Drainage District*, 224 La. 105, 68 So. 2d 774 (1953); *Benedict v. City of New Orleans*, 115 La. 645, 39 So. 792 (1905); *Saucier v. City of New Orleans*, 119 La. 179, 43 So. 999 (1907). Since we hold Act 405 of 1962 not to be a local or special act the prohibitions of Article IV §4 and §6 are not applicable.

For the reason above assigned, we see no prohibition against the enactment of Act 405 of 1962, nor any violation of constitutional provisions which may render it invalid. Accordingly, we affirm the judgment of the trial court.

AFFIRMED

APPENDIX C.

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

STATE EX REL JEFFERSON PARISH SCHOOL BOARD — July 1, 1977

V.

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS AND THE STATE OF LOUISIANA — NO. 60,069

In re: Jefferson Parish School Board applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans

---

Writ denied, Under the assignments of error, the judgment of court of appeal is correct.

/s/WFM
/s/ JWS
/s/ ATJR
/s/ PFC

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
July 1, 1977

/s/ Harold A. Moise, Jr.
Clerk

APPENDIX D

ACT No. 405

House Bill No. 794

BY: Messrs. LeBreton, Vesich, Matassa, McGittigan, Altmyer, Thomas, Gregson, Casey, Anzelmo, Buras, Crais, Ciaccio, O'Brien, Bolden, Landrieu, Murtes, Smither, Sullivan, Barranger and Pfister and Senators Fink, Deichmann, O'Keefe, Duplantier, Hickey, O'Hara, Eustis and Tessier.

AN ACT

To provide additional means and authority to carry out the purposes of the public park located in the City of New Orleans known as the City Park of New Orleans by transferring title to certain State owned lands within the City Park to the City of New Orleans and providing for the management and control thereof by the New Orleans City Park Improvement Association, an agency of the State; and to provide for the transfer of title to other lands by the City of New Orleans to the Orleans Parish School Board, an agency of the State; repealing all laws or parts of laws in conflict herewith.

WHEREAS, due proof has been made that notice of intention to apply for the passage of this Act has been published in accordance with the provisions of Article IV, Section 6 of the Constitution of the State of Louisiana of 1921.

Be it enacted by the Legislature of Louisiana:

Section 1. In order to provide additional means and furnish resources to carry out the purposes for which the City Park in the City of New Orleans was created and in order to promote the welfare of the public school children of the Parish of Orleans and the other Parishes of the State, the following described lands situated within the presently existing boundaries of the City Park in New Orleans belonging to the State of Louisiana, and to which there may be any claim by any agency thereof, including the Orleans Parish School Board or the Jefferson Parish School Board or any other School Board, are hereby granted, transferred, conveyed and delivered unto the City of New Orleans:

Fractional Section 16, Township 12 South, Range 11 East, Southeastern Land District of Louisiana, East of the Mississippi River, located within the City Park of the City of New Orleans.

Section 2. The vesting of title to the said lands in the City of New Orleans shall be effective only upon the execution by the Mayor of the City of New Orleans of the notarial instrument provided for in Section 4 of this Act, and shall be evidenced by a certificate of title, which shall be issued by the Register of the State Land Office immediately upon being furnished with a certified copy of the notarial instrument provided for in Section 4 of this Act.

Section 3. The New Orleans City Park Improvement Association, an agency of the State of Louisiana, shall continue to have the management of and shall be and remain in control of the property conveyed by Section 1 of this Act to the same extent and with the same authority as now exercised by said Board over the park in New Orleans known as the City Park, and the above described land is hereby dedicated and recognized as a part of the Public Park in New Orleans known as City Park.

Section 4. The City of New Orleans, in consideration of its receipt of the fractional 16th Section described in Section 1 hereof, through its Mayor, is hereby authorized to convey, by notarial instrument before any Notary Public, a piece or portion of ground containing approximately 17 acres, located in the City Park of the City of New Orleans, to the Orleans Parish School Board for public school purposes. Said land shall front upon the west side of Wisner Blvd., and shall be adjacent to the site of ground owned by the United States of America Agricultural Department Laboratory. The exact dimensions of said portion of ground are left to the discretion of the Mayor of the City of New Orleans, the Orleans Parish School Board and the New Orleans City Park Improvement Association. Such site, when conveyed, is no longer to be dedicated for public park purposes and is then to be dedicated for public school purposes and the same is no longer to be under the management and control of the New Orleans City Park Improvement Association.

Section 5. Any land acquired by the Orleans Parish School Board pursuant to this act shall be held by it for the same purposes, benefits and uses as is presently provided by law for Sixteenth Section Lands, and its subsequent sale or other disposition, as well as the disbursement of the proceeds of any subsequent sale thereof shall be the same as is presently provided by law for Sixteenth Section Lands and the rights of the Jefferson Parish School Board in said land shall be the same as they were in the Sixteenth Section conveyed in Section 1 of this Act.

Section 6. All laws or parts of laws in conflict herewith are hereby repealed.

Approved by the Governor: July 13, 1962.

A true copy:

WADE O. MARTIN, JR.
Secretary of State.